

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

STEPHEN ELLSWORTH, as an individual
and as a Representative of the classes and on
behalf of the general public,

Plaintiff,

v.

U.S. BANK, N.A., and AMERICAN
SECURITY INSURANCE COMPANY,

Defendants.

No. 3:12-cv-02506-LB

**FINAL ORDER APPROVING CLASS
SETTLEMENT, ATTORNEY'S FEES,
COSTS, AND INCENTIVE AWARDS**

[ECF Nos. 298, 301, 302]

INTRODUCTION

This class-action lawsuit challenges U.S. Bank's practice of force-placing backdated flood insurance that was underwritten by American Security Insurance Company ("ASIC") and U.S. Bank's receipt of payments from ASIC in the form of expense reimbursements and discounted administrative insurance-tracking services. (Second Amended Class Action Complaint ("SAC"), ECF No. 169, ¶ 2.¹) The plaintiffs allege six claims: (1) breach of their form mortgage contracts by U.S. Bank; (2) breach of the implied covenant of good faith and fair dealing by U.S. Bank under the laws of California and New Mexico; (3)-(4) unjust enrichment of U.S. Bank and ASIC under the laws of California and New Mexico; and (5)-(6) resulting violations of California Business and

¹ Record citations are to documents in the Electronic Case File ("ECF"); pinpoint citations are to the ECF-generated page numbers at the tops of documents.

1 Professions Code section 17200 by U.S. Bank and ASIC. The court certified multi-state, California,
2 and New Mexico classes. (6/13/14 Order, ECF No. 250; 8/20/14 Order, ECF No. 261.) The parties
3 then settled all claims. (*See* Motion For Final Approval, ECF No. 301.) The court granted the
4 plaintiffs' unopposed motion for preliminary approval. (4/23/15 Order, ECF No. 295.) The plaintiffs
5 now move for final approval of the settlement, attorney's fees and expenses of \$625,000, and \$2,500
6 per household for the named plaintiffs; the defendants joined the motion. (ECF Nos. 298, 301, 302.)
7 The court held a fairness hearing on September 24, 2015. (9/24/15 Minute Order, ECF No. 303.)
8 The court finds the settlement fair, adequate, and reasonable and approves the final settlement,
9 including fees, costs, and the incentive awards to the named plaintiffs.

10 **STATEMENT**

11 **I. THE LAWSUIT TO DATE**

12 The plaintiffs filed the lawsuit in May 2012, an amended complaint in July 2012, and a second
13 amended complaint in December 2013. (ECF Nos. 1, 26,169.) The litigation has been protracted and
14 included U.S. Bank's motion to compel arbitration, three rounds of motions to dismiss (all denied), a
15 motion for judgment on the pleadings, class certification, and U.S. Bank's attempt to seek
16 interlocutory review of the court's class-certification order at the Ninth Circuit, which denied the
17 petition. (*See generally* docket.) The parties ultimately settled the case after several settlement
18 conferences and calls with another magistrate judge.

19 **II. THE SETTLEMENT**

20 The settlement classes are those that the court certified on June 13, 2014. (*See* 8/20/14 Order
21 Amending Class Definitions, ECF No. 261; Settlement Agreement, ECF No. 291-3, ¶ 2(o); 4/23/15
22 Preliminary Approval Order, ECF No. 295 at 2-4.) The court summarized the terms of the settlement
23 agreement in its prior order and incorporates that order by reference here. (*See* 4/23/15 Preliminary
24 Approval Order, ECF No. 295 at 2-4.) Class members will receive a refund of 12.5 percent of the
25 amount that they were charged for lender-placed flood insurance ("LPFI") during the relevant class
26 periods set forth in the class definitions (excluding any amounts refunded). (Settlement Agreement,
27 ECF No. 291-3, ¶ 23.) Class members who were charged for LPFI coverage backdated 120 days or
28 more will receive additional compensation that depends on how far back the coverage was

1 backdated: (1) \$50 if backdated 120 to 180 days; (2) \$75 if backdated 181 to 365 days; and (3) \$100
2 if backdated over one year. (*Id.* ¶ 23.) Class members will receive refunds automatically by check
3 and do not need to submit claim forms. (Richter Decl., ECF No. 291-2, ¶ 4; Settlement Agreement ¶
4 25.) The amounts that are attributable to checks not cashed within 180 days will be redistributed to
5 other class members who cashed their checks (if there is more than \$2 per class member remaining
6 net of distribution costs) or alternatively to Habitat for Humanity as a *cy pres* award, subject to the
7 court's approval. (Settlement Agreement ¶ 27.) No funds will revert to the defendants. (*Id.*)

8 The settlement agreement also provides for prospective relief. First, for three years, U.S. Bank
9 and its affiliates will not accept (and ASIC will not offer) commissions, qualified expense
10 reimbursements, administrative payments, reinsurance payments, or compensation in connection
11 with LPFI on property owned by any class member pursuant to a closed-end residential mortgage
12 loan secured by a Frannie Mae/Freddie Mac Uniform Instrument, from any insurance vendor or
13 agent (or affiliate of the same) other than payments on damages claims. (*Id.* ¶¶ 16-17.) Second, for
14 three years, ASIC and its affiliates will not give U.S. Bank or its affiliates below-cost or free
15 outsourced services in connection with LPFI on property owned by any class member and lender-
16 placed on property owned by any class member pursuant to a closed-end residential mortgage loan
17 secured by a Frannie Mae/Freddie Mac Uniform Instrument, provided however that outsourced
18 services do not include expenses associated with tracking functions that ASIC or its affiliates incur
19 for their own benefit to protect themselves from (a) exposure to lost premium and losses to
20 properties on which no other insurance is in effect or (b) administrative costs associated with
21 providing and subsequently cancelling LPFI on properties on which LPFI is not required. (*Id.*
22 ¶¶ 16, 18.) Third, for three years, (a) U.S. Bank will provide the notice required in 42 U.S.C.
23 § 4012a(e) to class members at least 45 days before charging them for LPFI and (b) if evidence of
24 continuous adequate coverage is provided by a class member within that 45-day period, the class
25 member will not be charged for LPFI for any periods during which such coverage will be in place.
26 (*Id.* ¶¶ 16, 19.) A breach of this provision entitles class members to a refund of the LPFI charges
27 attributable to periods during which they maintained flood insurance on their own. (*Id.*)

28 Class members who do not opt out of the settlement will release U.S. Bank and ASIC (and their

1 affiliates, agents, and insurance vendors) from all claims that were or could have been asserted in the
 2 class action in connection with LPFI on a closed-end residential mortgage secured by a Fannie
 3 Mae/Freddie Mac Uniform Instrument serviced by U.S. Bank during the relevant class periods. (*Id.*
 4 ¶ 55.) Any claims that do not relate to LPFI or that relate to LPFI purchased in connection with other
 5 times of loans or mortgage instruments will not be released. (*Id.*, ¶¶ 55, 58.)

6 **III. NOTICE OF SETTLEMENT**

7 The claims administrator Dahl Administration LLC sent the court-approved class notice to 3,462
 8 class members via first-class mail. (Dahl Decl., ECF No. 301-3, ¶ 5.) The notices provided all
 9 information that the court required in its order preliminarily approving the settlement including (1) a
 10 summary of the lawsuit and the claims; (2) clear definitions of the classes; (3) a description of the
 11 material terms of the settlement; (4) a disclosure of the release of the claims by class members; (5)
 12 an explanation of class members' opt-out rights, information about how to opt out, and the deadline
 13 to opt out; (6) the date, time, and location of the final approval hearing; (7) the website and toll-free
 14 number for more information about the settlement; and (8) information about class counsel and the
 15 class representatives and compensation that they may receive. (*See* ECF No. 295 at 6-7; Dahl Decl.,
 16 Ex. A, ECF No. 301-4.) Dahl supplemented notice with a notice in USA Today that was published
 17 on May 28, 2015, and it set up a website with the Second Amended Complaint, the Settlement
 18 Agreement, the Class Notice, the Motion for Preliminary Approval, the preliminary approval order,
 19 the motion for attorney's fees, costs, and class awards, and frequently asked questions. (Dahl Decl.,
 20 ECF No. 301-3, ¶¶ 9-11, 13 & Ex. A., ECF No. 301-4.) The class notice provided that class
 21 members could contact class counsel for more information. (ECF No. 301-4 at 8.)

22 No class members objected, and one class member opted out. (Dahl Decl., ECF No. 301-3, ¶¶
 23 14-15 & Ex. C, ECF No. 301-6.) 4.9% (or 172) class notices ultimately were undeliverable. (*Id.* ¶ 8.)

24 **ANALYSIS**

25 **I. JURISDICTION**

26 The court has jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2).

27 **II. NOTICE**

28 As described above, the claims administrator provided notice to all members of the class in the

1 form previously approved by the court. The notice met all legal requisites: it was the best notice
 2 practicable, satisfied the notice requirements of Rule 23, adequately advised class members of their
 3 rights under the Settlement, met the requirements of due process, and complied with the court's
 4 order regarding notice. (*See* 4/23/15 Order, ECF No. 295 at 6-10.)

5 **III. COMPLIANCE WITH CLASS ACTION FAIRNESS ACT**

6 The defendants provided the required notice to federal and state regulators showing compliance
 7 with the Class Action Fairness Act, 28 U.S.C. § 1715. (*See* Merten Decl., ECF No. 296; Durocher
 8 Decl., ECF No. 297.) The notice met the requirements of 28 U.S.C. § 1715 and was made more
 9 than 90 days before the final approval hearing on September 24, 2015. *See* 28 U.S.C. § 1715(d).

10 **IV. FINAL APPROVAL OF SETTLEMENT**

11 Settlement is a strongly favored method for resolving disputes, particularly “where complex
 12 class action litigation is concerned.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th
 13 Cir. 1992); *see, e.g., In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). A court may
 14 approve a proposed class-action settlement only “after a hearing and on finding that it is fair,
 15 reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). The court need not ask whether the proposed
 16 settlement is ideal or the best possible; it determines only whether the settlement is fair, free of
 17 collusion, and consistent with the named plaintiffs’ fiduciary obligations to the class. *Hanlon v.*
 18 *Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). In *Hanlon*, the Ninth Circuit identified factors
 19 relevant to assessing a settlement proposal: (1) the strength of the plaintiff’s case; (2) the risk,
 20 expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class-
 21 action status throughout trial; (4) the amount offered in settlement; (5) the extent of discovery
 22 completed and the stage of the proceeding; (6) the experience and views of counsel; (7) the
 23 presence of a government participant; and (8) the reaction of class members to the proposed
 24 settlement. *Id.* at 1026 (citation omitted).

25 “Where a settlement is the product of arms-length negotiations conducted by capable and
 26 experienced counsel, the court begins its analysis with a presumption that the settlement is fair and
 27 reasonable.” *Garner v. State Farm Mut. Auto Ins. Co.*, 2010 WL 1687832, *13 (N.D. Cal. Apr. 22,
 28 2010); *see, e.g., Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (“We put a

1 good deal of stock in the product of an arms-length, non-collusive, negotiated resolution . . .);
 2 *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

3 The court finds the settlement fair, adequate, and reasonable under the *Hanlon* factors.

4 First, litigation poses risks and is expensive, and an evaluation of the strengths and weaknesses
 5 of the plaintiffs' case militates in favor of settlement. Some courts have dismissed similar claims in
 6 other lender-placed insurance and backdating cases. (*See* Motion, ECF No. 301 at 18-19 (collecting
 7 cases).) Other courts have denied class certification in lender-placed insurance cases. (*See id.* at 19-
 8 20 (collecting cases).) The plaintiffs note the risks in maintaining the class-action status of the case.
 9 (*Id.*) The court is very aware of the strengths and weaknesses of the case, given how intensively the
 10 parties litigated it through motions, discovery, and class certification.

11 Second, the settlement treats class members fairly. It provides for a flat refund, and all class
 12 members will receive the same prospective relief. The relief compares favorably to other lender-
 13 placed insurance settlements that courts have approved. (*See id.* at 15-17 (summarizing
 14 settlements).) The settlement classes are co-extensive with the classes certified by the court. There
 15 is no reversion to the defendants; uncashed settlement funds will be redistributed to class members
 16 or to Habitat for Humanity as a *cy pres* award. The plaintiffs are represented by experienced and
 17 informed counsel. Finally, no class members object, and only one opted out. (*See* Ex. C to Dahl
 18 Decl., ECF No. 301-6.)

19 In sum, the court finds that viewed as a whole, the proposed settlement is sufficiently "fair,
 20 adequate, and reasonable" and thus approves the settlement. *See Officers for Justice v. Civil Serv.*
 21 *Comm'n of the City and Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

22 **V. ATTORNEY'S FEES AND EXPENSES**

23 Class counsel asks for \$625,000 in attorney's fees and expenses. (Settlement Agreement, ECF
 24 No. 291-3 ¶ 33; Motion, ECF No. 298 at 7.)

25 Rule 23(h) of the Federal Rules of Civil Procedure provides: "In a certified class action, the
 26 court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by
 27 the parties' agreement." Fee provisions included in proposed class-action settlements must be
 28 reasonable. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). The

1 court is not bound by the parties' settlement agreement as to the amount of attorney's fees. *Id.* at
 2 943. The Ninth Circuit has instructed district courts to review class fee awards with special rigor:

3 Because in common fund cases the relationship between plaintiffs and their attorneys turns
 4 adversarial at the fee-setting stage, courts have stressed that when awarding attorneys' fees
 5 from a common fund, the district court must assume the role of fiduciary for the class
 6 plaintiffs. Accordingly, fee applications must be closely scrutinized. Rubber-stamp
 7 approval, even in the absence of objections, is improper.

8 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (quotation omitted).

9 In common-fund cases, the Ninth Circuit requires district courts to assess proposed fee awards
 10 under either the "lodestar" method or the "percentage of the fund" method. *Fischel v. Equitable*
 11 *Life Assurance Soc'y of the U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002); *Hanlon*, 150 F.3d at 1029.
 12 The court finds that the fee request here is reasonable under both approaches.

13 Where the settlement involves a common fund, courts typically award attorney's fees based on
 14 a percentage of the total settlement. The Ninth Circuit has established a "benchmark" that fees
 15 should equal 25% of the settlement, although courts diverge from the benchmark based on a variety
 16 of factors, including "the results obtained, risk undertaken by counsel, complexity of the issues,
 17 length of the professional relationship, the market rate, and awards in similar cases." *Morales v.*
 18 *Stevco, Inc.*, 2013 WL 1222058, at *2 (E.D. Cal. Mar. 25, 2013); *see also Morris v. Lifescan, Inc.*,
 19 54 F. App'x 663, 664 (9th Cir. 2003) (affirming 33% fee award); *In re Pac. Enters. Secs. Litig.*, 47
 20 F.3d 373, 379 (9th Cir. 1995) (same); *State of Fla. v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990); *Six*
 21 *Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

22 When determining the value of a settlement, courts consider the monetary and non-monetary
 23 benefits that the settlement confers. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 972-74 (9th Cir.
 24 2003); *Pokorny v. Quixtar, Inc.*, 2013 WL 3790896, *1 (N.D. Cal. July 18, 2013) ("The court may
 25 properly consider the value of injunctive relief obtained as a result of settlement in determining the
 26 appropriate fee."); *In re Netflix Privacy Litig.*, 2013 WL 1120801, at *7 (N.D. Cal. Mar. 18, 2013)
 27 (settlement value "includes the size of the cash distribution, the *cy pres* method of distribution, and
 28 the injunctive relief").

Finally, Ninth Circuit precedent requires courts to award class counsel fees based on the total
 benefits being made available to class members rather than the actual amount that is ultimately

1 claimed. *Young v. Polo Retail, LLC*, 2007 U.S. Dist. LEXIS 27269, *23 (N.D. Cal. Mar. 28, 2007
2 (citing *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026 (9th Cir. 1997)) (“district court
3 abused its discretion in basing attorney fee award on actual distribution to class” instead of amount
4 being made available)).

5 The fees are reasonable under the percentage method and are supported by a lodestar cross-
6 check.

7 After applying the percentage method, courts typically roughly calculate the lodestar as a “cross-
8 check to assess the reasonableness of the percentage award.” *See, e.g., Weeks v. Kellogg Co.*, 2013
9 WL 6531177, *25 (C.D. Cal. Nov. 23, 2013); *see also Serrano v. Priest*, 20 Cal. 3d 25, 48-49 (Cal.
10 1977); *Fed-Mart Corp. v. Pell Enters.*, 111 Cal. App. 3d 215, 226-27 (Cal. Ct. App. 1980); *Melnyk*
11 *v. Robledo*, 64 Cal. App. 3d 618, 624 (Cal. Ct. App. 1976); *Clejan v. Reisman*, 5 Cal. App. 3d 224,
12 241 (Cal. Ct. App. 1970). “The lodestar . . . is produced by multiplying the number of hours
13 reasonably expended by counsel by a reasonable hourly rate.” *Lealao v. Beneficial California, Inc.*,
14 82 Cal. App. 4th 19, 26 (Cal. Ct. App. 2000). Once the court has fixed the lodestar, it may increase
15 or decrease that amount by applying a positive or negative “multiplier to take into account a variety
16 of other factors, including the quality of the representation, the novelty and complexity of the
17 issues, the results obtained and the contingent risk presented.” *Id.*

18 Class counsel also are entitled to reimbursement of reasonable out-of-pocket expenses. Fed. R.
19 Civ. P. 23(h); *see Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (attorneys may recover
20 reasonable expenses that would typically be billed to paying clients in non-contingency matters.);
21 *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Ca. 1995) (approving
22 reasonable costs in class action settlement). Costs compensable under Rule 23(h) include
23 “nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).

24 Based on the declarations submitted by the plaintiffs’ counsel, the court finds that as of early
25 July 2015, the lodestar is \$1,006,577.50 (after write-offs for unnecessary or duplicative expenses or
26 for any time keeper who spent less than 10 hours on the file), and expenses are \$91,900,33. (Richter
27 Decl., ECF No. 298-2, ¶¶ 10, 15-16 & Exs. 4 & 6.) The billing rates are within normal and
28 customary ranges for time keepers with similar qualifications and experience in the markets of San

1 Francisco and Minneapolis. (*See id.* ¶ 10 n.2.) The figures do not include the work that counsel
 2 spent after early July preparing the motion for final approval. (*Id.* ¶ 13.)

3 The plaintiffs' attorneys detailed their efforts sufficiently, and again, the court is familiar with
 4 the course of the litigation. The rates counsel used are appropriate given the deferred and
 5 contingent nature of counsel's compensation. *See LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764
 6 (2nd Cir. 1998) ("[C]urrent rates, rather than historical rates, should be applied in order to
 7 compensate for the delay in payment . . .") (citing *Missouri v. Jenkins*, 491 U.S. 274, 283-84
 8 (1989)); *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994)
 9 ("The district court has discretion to compensate delay in payment in one of two ways: (1) by
 10 applying the attorneys' current rates to all hours billed during the course of litigation; or (2) by
 11 using the attorneys' historical rates and adding a prime rate enhancement.").

12 In sum, the court finds the fee request reasonable under both the "percentage of the fund"
 13 approach and the lodestar cross-check. The court also finds the expenses to be appropriate and
 14 supported by the submissions. The \$625,000 will not reduce the amounts paid to class members.
 15 (Settlement Agreement ¶ 33.) The court approves and awards \$625,000 in fees and expenses.

16 **VI. INCENTIVE AWARDS**

17 Under the terms of the settlement agreement, the class representatives will receive awards of
 18 \$2,500 per household, which will be paid by the defendants separately and thus will not reduce the
 19 payments to the class members. (*Id.* ¶ 34.)

20 District courts must evaluate proposed incentive awards individually, using relevant factors that
 21 include, "the actions the plaintiff has taken to protect the interests of the class, the degree to which
 22 the class has benefitted from those actions, . . . [and] the amount of time and effort the plaintiff
 23 expended in pursuing the litigation." *Staton*, 327 F.3d at 977. "Such awards are discretionary . . .
 24 and are intended to compensate class representatives for work done on behalf of the class, to make
 25 up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize
 26 their willingness to act as a private attorney general." *Rodriguez*, 563 F.3d at 958-959.

27 The Ninth Circuit has "noted that in some cases incentive awards may be proper but [has]
 28 cautioned that awarding them should not become routine practice." *Radcliffe v. Experian Info.*

1 *Solutions*, 715 F.3d 1157, 1163 (9th Cir. 2013) (discussing *Staton*, 327 F.3d at 975-78). The Ninth
2 Circuit also has emphasized that district courts “must be vigilant in scrutinizing all incentive
3 awards to determine whether they destroy the adequacy of the class representatives.” *Id.* at 1164.

4 The incentives proposed here are within the range of awards that the Ninth Circuit has either
5 affirmed or cited with approval. *See In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 463 (9th Cir.
6 2000) (approving \$5,000 incentive to each named representative of potentially 5400-member class
7 in settlement of \$1.725 million); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002)
8 (approving \$2,000 incentive award to five named plaintiffs; class numbered potentially more than 4
9 million; settlement value of \$3 million) (cited in *Staton*).

10 The named plaintiffs merit the incentive awards. Their lawyer has explained the efforts they
11 personally made in pursuing this lawsuit by producing documents and information in response to
12 discovery requests, attending depositions, participating in the mediation process, reviewing the
13 settlement agreement and relevant pleadings, furnishing declarations for class certification and for
14 approval of the settlement, and cooperating and communicating with class counsel throughout the
15 litigation. (Richter Decl., ECF No. 298-2, ¶ 26; *see* Ellsworth Decl., ECF No. 291-6, ¶ 13; Weaver
16 Decl., ECF No. 291-7, ¶ 13; Skelly Decl., ECF No. 291-8, ¶ 13.) The court approves the awards.

17 **VII. OTHER ORDERS**

18 1. One person timely and validly requested exclusion from the settlement and thus is not a
19 member of the classes, will have no rights or interests with respect to the settlement, and is not
20 bound by any orders or judgments entered with respect to the settlement. (*See* Ex. C to Dahl Decl.,
21 ECF No. 301-6.)

22 2. Each class member (except those who submitted a timely and valid request for exclusion)
23 will be bound by the Settlement Agreement and all provisions therein, including, *inter alia*, the
24 Class Release in the Settlement Agreement, which is set forth below and expressly incorporated
25 herein in all respects, as of the effective date of the Settlement Agreement after final judgment is
26 entered. Upon the effective date of the Settlement, the named plaintiffs and all class members
27 (except those who submitted a timely and valid request for exclusion) will be deemed to have
28 forever released, relinquished, and discharged the Released Persons (as defined in the Settlement

1 Agreement) from any and all Released Claims (as defined in the Settlement Agreement), including
2 all claims arising out of, relating to, or in connection with the initiation, settlement, prosecution, or
3 dismissal of the Action.

4 (a) Release and Waiver Definitions.

5 (i) "Affiliate" of an entity means any person or entity which controls, is controlled by, or is
6 under common control with such entity.

7 (ii) "ASIC" means American Security Insurance Company.

8 (iii) "U.S. Bank" means U.S. Bank National Association.

9 (iv) "Defendants" means U.S. Bank and ASIC.

10 (v) "Backdated" lender-placed flood insurance means lender-placed flood insurance with an
11 effective date prior to its issue date.

12 (vi) "Class Release" means the Released Claims of Class as defined in Paragraph 2(b),
13 below.

14 (vii) "Released Claims" means all claims, actions, causes of action, suits, debts, sums of
15 money, payments, obligations, reckonings, promises, damages, penalties, attorney's fees and costs,
16 liens, judgments, and demands of any kind whatsoever that each class member may have until the
17 close of the Class Periods or may have had in the past, whether in arbitration, administrative, or
18 judicial proceedings, whether as individual claims or as claims asserted on a class basis, whether
19 past or present, mature or not yet mature, known or unknown, suspected or unsuspected, whether
20 based on federal, state, or local law, statute, ordinance, regulations, contract, common law, or any
21 other source, that were or could have been sought or alleged in the Action that relate, concern, arise
22 from, or pertain in any way to the Released Parties' conduct, policies, or practices concerning
23 lender-placed flood insurance or to charges for U.S. Bank's placement, or ASIC's issuance, of
24 lender-placed flood insurance during the class periods, including but not limited to conduct,
25 policies or practices concerning lender-placed flood insurance or charges for U.S. Bank's
26 placement of lender-placed flood insurance during the class periods. The named plaintiffs explicitly
27 acknowledge that unknown losses or claims could possibly exist and that any present losses may
28 have been underestimated in amount or severity.

(viii) “Released Parties” means U.S. Bank and ASIC, and each and all of their respective past, present, and future divisions, parents, subsidiaries, predecessors, investors, parent companies, Affiliates, and each and all of their respective past, present, and future directors, officers, managers, employees, general partners, limited partners, principals, agents, brokers, distributors, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint ventures, assigns, or related entities, and each and all of their respective executors, successors, assigns, and legal representatives.

(b) Class Release. The named plaintiffs and each class member and his or her assigns, heirs, successors and personal representatives will be deemed to have fully, conclusively, irrevocably, forever, and finally released, resolved, relinquished, and discharged each and all of the Released Parties from each of the Released Claims that exist in their favor through the end of the Class Periods. The named plaintiffs and class members agree that they will not institute any action or cause of action (in law, in equity, or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which they may have or claim to have in state or federal court, or with any state, federal or local government agency or with any administrative or advisory body, asserting the Released Claims. These released claims will include but not be limited to, all claims related to U.S. Bank’s flood insurance requirements; the relationship, whether contractual or otherwise, between U.S. Bank (and its Affiliates) and ASIC (and its Affiliates) regarding lender-placed flood insurance, including, but not limited to, the procuring, underwriting, placement, tracking, or costs of lender-placed flood insurance; the coverage amount, duration, issue date, alleged “backdating,” or alleged excessiveness of any of lender-placed flood insurance placed or charged by U.S. Bank; the payment or receipt of commissions expense reimbursements, alleged “kickbacks,” or any other compensation under any lender-placed flood insurance placed or charged by U.S. Bank; any alleged “tying” arrangement involving U.S. Bank and lender-placed flood insurance; any alleged breach of fiduciary duty by U.S. Bank concerning lender-placed flood insurance; any alleged tortious interference by ASIC (or its Affiliates) with mortgage loans serviced by U.S. Bank; the disclosure or non-disclosure of any payment, expenses, fees, charges, or features pertaining to or under any lender-placed flood insurance or coverage under such lender-placed flood insurance and charges for such coverage placed or charged

1 by U.S. Bank; the receipt or non-disclosure of any benefit under any lender-placed flood insurance or
2 coverage under such lender-placed flood insurance and charges for such coverage placed or charged
3 by U.S. Bank; the content, manner, or accuracy of any communications regarding the placement of
4 any lender-placed flood insurance by U.S. Bank; or the regulatory approval or non-approval of any
5 lender-placed flood insurance, or the premium thereon, placed or charged by U.S. Bank.

6 (c) Without in any way limiting its scope, the Class Release covers by example and without
7 limitation, any and all claims for attorney's fees, costs, expert fees, or consultant fees, interest, or
8 litigation fees, or any other fees, costs, or disbursements incurred by class counsel, the named
9 plaintiffs, or any class members in connection with or related in any manner to this action, the
10 settlement of this action, the administration of the Settlement, or the Released Claims, except to the
11 extent otherwise specified in the Settlement Agreement.

12 (d) The Class Release is effective only as to claims relating to lender-placed flood insurance
13 policies purchased in connection with a closed-end residential mortgage loan secured by a Fannie Mae
14 / Freddie Mac Uniform Instrument owned or serviced by U.S. Bank during the relevant class periods,
15 as reflected in the class data produced by U.S. Bank and ASIC in connection with this Action.

16 (e) The Class Release does not affect the rights of class members who timely and properly
17 submitted a request for exclusion from the Settlement in accordance with the requirements of the
18 Preliminary Approval Order and paragraph 47 of the Settlement Agreement.

19 (f) The Class Release does not preclude any action to enforce the terms of the Settlement
20 Agreement, including the express warranties and covenants contained therein.

21 3. Each and every class member (excluding those class members who submitted a timely and valid
22 request for exclusion) is hereby permanently barred and enjoined, as of the effective date of the
23 Settlement, from (a) bringing, joining, continuing to prosecute or participating in (as class members or
24 otherwise) any action asserting the Released Claims as defined in the Settlement Agreement; and (b)
25 organizing class members, or soliciting the participation of class members, in a separate class for
26 purposes of pursuing any action (including by seeking to amend a pending complaint to include class
27 allegations, or seeking class certification in a pending action in any jurisdiction) based on or relating
28 to any of the Released Claims.

1 4. The court authorizes the parties to implement the terms of the Settlement Agreement.

2 5. This final approval order, the final judgment to be entered pursuant to this final approval order,
3 and the Settlement Agreement (including the exhibits thereto) may be filed in any action against or by
4 any of the Released Parties to support a defense of res judicata, collateral estoppel, release, good faith
5 settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar
6 defense or counterclaim.

7 6. Without further order of the court, the parties may agree to reasonably necessary extensions of
8 time to carry out any of the provisions of the Settlement Agreement.


9 7. This final approval order and the final judgment to be entered pursuant to this final approval
10 Order will be effective upon entry. In the event that the final approval order and the final judgment to
11 be entered pursuant to this final approval order are reversed or vacated pursuant to a direct appeal in
12 this Action or the Settlement Agreement is terminated pursuant to its terms, all orders entered and
13 releases provided in connection herewith will be null and void.

14 **CONCLUSION**

15 The court approves the settlement, awards attorney's fees and expenses of \$625,000, and awards
16 \$2,500 each to (1) Stephen Ellsworth, (2) Marilyn Weaver, and (3) Lawrence and Donene Skelley
17 (jointly). This disposes of ECF Nos. 298, 301, and 302.

18 **IT IS SO ORDERED.**

19 Dated: September 24, 2015

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21 LAUREL BEELER
22 United States Magistrate Judge
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